



The Indian Journal for Research in Law and Management

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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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CHALLENGING IN IMPLEMENTING THE POCSO ACT: BRIDGING THE GAP BETWEEN LAW AND REALITY

~Aayushi Jadhav

ABSTRACT

The Protection of Children from Sexual Offences (POCSO) Act, 2012, arrived as a legislative reckoning India's formal acknowledgment that children, as a class of victims, deserved more than the incidental shelter of a colonial-era penal code. The Indian Penal Code's scattered provisions had long betrayed their inadequacy, offering no specialised procedures, no dedicated adjudicatory infrastructure, and no coherent recognition of the distinctive trauma that sexual offences inflict upon children. The POCSO Act was meant to be the corrective a self-contained statute armed with Special Courts, child-sensitive trial protocols, mandatory reporting obligations, and a graduated punitive framework that the 2019 amendment sharpened further with the introduction of capital punishment for aggravated penetrative sexual assault.

This paper proceeds from the conviction that POCSO's shortcomings are not those of a poorly conceived law. The statute, in its design, reflects genuine legislative seriousness. What has failed is the state's willingness to build, sustain, and resource the institutional architecture without which even the most carefully drafted legislation is reduced to ornament.

I. INTRODUCTION

1.1 CHILD SEXUAL ABUSE AS A SOCIO-LEGAL PHENOMENON IN INDIA

Child sexual abuse occupies a peculiar and deeply troubling position in India's social imagination acknowledged in its horror when a case breaches the threshold of public outrage, and systematically denied or domestically resolved in the vast majority of instances where it does not. More than nineteen percent of the world's children reside in India, accounting for approximately forty-two percent of the country's total population, a demographic reality that renders the question of child protection one of civilisational urgency.¹

The data that does exist is disturbing enough. Crimes against children increased by 16.2% between 2020 and 2021, with India recording 1,49,404 cases of crime against children in 2021 compared to 1,28,531 the previous year. Of these, 36.05% — some 53,874 cases — were registered under POCSO in 2021, with Uttar Pradesh, Maharashtra, and Madhya Pradesh collectively accounting for the largest share.² Between 2016 and 2020, POCSO cases increased by more than 30%, even as pendency of such cases crossed 94% by the end of 2020. These figures represent only what has been formally reported a fraction of the actual incidence of abuse but the unreported cases due to social stigma .

The consequences of child sexual abuse reverberate through the victim's development with a persistence that no punishment to the perpetrator can undo manifesting in psychological trauma, disrupted education, fractured relationships, and in the most severe cases, a permanently altered capacity for trust and self-worth.³

1.2 THE PRE-POCSO LEGAL LANDSCAPE

For the better part of a century and a half, India addressed the sexual abuse of children through the blunt and largely inadequate instruments of the Indian Penal Code, 1860 a statute conceived in a colonial context with no particular sensitivity to the distinctive legal needs of child victims. Section 375, governing rape, offered no protection to male victims and covered only peno-vaginal penetration. Section 354, which addressed outraging the modesty of a woman, was hampered by the absence of any statutory definition of "modesty," carried a weak penalty, was compoundable, and critically, extended no protection whatsoever to male children. Section 377, addressing "unnatural offences," was undefined, applied only to victims penetrated by

¹ Piyali Bhattacharya, *Child Sexual Abuse in India: A Socio-Legal Analysis*, 14 J. Child Sexual Abuse 1, 3 (2018).

² Nat'l Crime Records Bureau, *Crime in India 2021* 289 (Ministry of Home Affairs 2022).

³ David Finkelhor, *Childhood Victimization: Violence, Crime, and Abuse in the Lives of Young People* 45–47 (Oxford Univ. Press 2008).

their attacker's act, and was never designed as an instrument for addressing child sexual abuse as such.⁴but it IPC was there where the age factor was 16.

1.3 LEGISLATIVE HISTORY

The POCSO Act's enactment was the product of a convergence of child rights advocacy, growing public consciousness of the scale of abuse, and binding international obligations. India ratified the United Nations Convention on the Rights of the Child on December 11, 1992, committing to align its laws with Article 34's mandate against all forms of sexual exploitation and abuse.⁵ A landmark study conducted by the Ministry of Women and Child Development in 2007 documented the scale of child sexual abuse with a specificity that could not be dismissed. The Protection of Children from Sexual Offences Act coming into force on November 14, 2012.⁶

II. LEGISLATIVE ARCHITECTURE

2.1 KEY DEFINITIONS

The Definition of "Child" Under Section 2(d) The most foundational and in retrospect most contested definitional choice embedded in the Act is its treatment of "child." Section 2(d) defines a child as any person below the age of eighteen years, a definition that makes consent legally irrelevant for all persons within that category.⁷ This was a deliberate legislative choice aligned with Article 1 of the UNCRC and India's international obligations.

THE SPECTRUM OF OFFENCES- Sections 3–4 define penetrative sexual assault broadly to include penile penetration, insertion of any object or body part into the vagina, mouth, urethra, or anus of a child, manipulation of any part of the child's body to cause penetration, and application of the mouth to a child's genital, anal, or breast area conspicuously broader than Section 375 IPC.⁸ Sections 5–6 define aggravated penetrative sexual assault to cover acts committed by persons in positions of authority, including police officers, public servants, members of the armed forces, or persons working in custodial institutions, hospitals, or

⁴ Indian Penal Code, 1860, §§ 354, 375, 377 (India); B.B. Pande, Protection of Children from Sexual Offences Act: A Critical Appraisal, 54 J. Indian L. Inst. 501, 503–04 (2012).

⁵ United Nations Convention on the Rights of the Child art. 34, Nov. 20, 1989, 1577 U.N.T.S. 3; India signed December 11, 1992.

⁶ Protection of Children from Sexual Offences Act, 2012, pmbl. (India); Protection of Children from Sexual Offences Act, Wikipedia (noting the legislative timeline).

⁷ Protection of Children from Sexual Offences Act, 2012, § 2(d) (India).

⁸ Id. §§ 3–4.

educational establishments.⁹ Section 6, as amended in 2019, prescribes a minimum of twenty years' rigorous imprisonment, extendable to life, with death available in the most extreme cases. Sections 7–8 govern sexual assault any act with sexual intent involving physical contact without penetration a provision that became the focus of the Supreme Court's landmark 2024 clarification. Sections 11–12 cover sexual harassment including non-contact conduct such as making sexually explicit gestures, showing pornographic material, or stalking¹⁰.

Section 42A establishes the Act's supremacy over conflicting legislation in the domain of child sexual offences.¹¹

2.2 STRUCTURAL INNOVATIONS

THE PRESUMPTION OF GUILT UNDER SECTIONS 29 AND 30

These sections create a mandatory reverse burden, requiring Special Courts to presume that the accused is guilty of the alleged offence and to presume the existence of the requisite culpable mental state, placing upon the accused the obligation to prove the contrary.¹² The legislative rationale is clear: child sexual abuse typically occurs in private without independent witnesses, and the principal source of evidence is the child's own testimony. The Bombay High Court in *Navin Dhaniram Baraiye v. State of Maharashtra* held that Section 29 operates only once the prosecution has first established foundational facts¹³. The Kerala High Court in *Justin @ Renjith v. Union of India* upheld the constitutional validity of these provisions, affirming that the primary duty of the prosecution to establish foundational facts always remains and never shifts to the accused.¹⁴

MANDATORY REPORTING UNDER SECTION 19

Section 19 introduced at the national level, for the first time, a mandatory reporting obligation: any person with knowledge or apprehension that an offence has been or is being committed must report the matter to the Special Juvenile Police Unit or the local police. Failure to report without reasonable cause is punishable under Section 21 with imprisonment of up to six months, a fine, or both.¹⁵ In practice, the mandatory reporting framework has delivered mixed

⁹ Id. §§ 5–6.

¹⁰ Id. §§ 7–8, 11–12, 13–15.

¹¹ Id. §§ 7–8, 11–12, 13–15.

¹² Id. §§ 29–30.

¹³ *Navin Dhaniram Baraiye v. State of Maharashtra*, (2021) Crim. L.J. 1423 (Bombay H.C.) (India).

¹⁴ *Justin @ Renjith v. Union of India*, (2019) Kerala H.C. (India).

¹⁵ Protection of Children from Sexual Offences Act, 2012, §§ 19, 21 (India).

results compliance rates remain low and the penal consequences for non-reporting have rarely been enforced.

SPECIAL COURTS UNDER SECTION 28

The Special Court is the institutional centre piece of the Act's justice delivery architecture. Section 28 mandates that each State Government designate a Court of Session to serve as the Special Court for each district. The Special Court possesses the power to take cognizance of offences without the accused being committed to it for trial, upon receiving either a complaint of facts or a police report, and is also empowered to award compensation under Section 33(8)¹⁶. Research has documented persistent implementation gaps many Special Courts lacking separate waiting areas, child-sensitive interview rooms, audio-visual facilities, and mechanisms to prevent the child's pre-trial exposure to the accused.

CHILD-FRIENDLY ATMOSPHERE UNDER SECTION 33

Section 33(2) requires that the Special Public Prosecutor and counsel for the accused communicate their questions to the Special Court, which shall in turn put those questions to the child eliminating direct questioning by advocates. Section 33(5) mandates that the child not be called repeatedly to testify, and Section 35 requires that the trial be concluded within one year of the court taking cognizance¹⁷. The Supreme Court in *Nipun Saxena v. Union of India* observed that child-friendly courts are not a procedural luxury but a constitutional necessity if the truth is to emerge from child testimony at all.¹⁸

2.3 THE 2019 AMENDMENT: PUNITIVE ESCALATION AND ITS APPRAISAL

The Protection of Children from Sexual Offences (Amendment) Act, 2019 introduced the death penalty for aggravated penetrative sexual assault in Section 6 and raised the minimum sentence to twenty years. The Statement of Objects and Reasons cited growing incidents of child sexual abuse and drew upon the Supreme Court's pronouncements in *Machhi Singh v. State of Punjab*¹⁹ and *Devender Pal Singh v. State (NCT of Delhi)*²⁰ on the "rarest of rare" doctrine. The 2019 Amendment also inserted an expanded definition of "child pornography" to include

¹⁶ Id. §§ 28, 33(8).

¹⁷ Id. §§ 33(2), 33(5), 35.

¹⁸ *Nipun Saxena v. Union of India*, (2018) 2 SCC 731 (India).

¹⁹ *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470 (India).

²⁰ *Devender Pal Singh v. State (NCT of Delhi)*, (2002) 5 SCC 234 (India).

visual depictions of sexually explicit conduct involving a child, including digitally generated images²¹.

The Amendment has attracted sustained and credible criticism. There is no credible empirical evidence that the death penalty serves as an effective deterrent in sexual offence cases. The Law Commission of India's 262nd Report on the Death Penalty, published in 2015, found no empirical evidence suggesting that capital punishment had a deterrent effect over and above life imprisonment.²² More critically, the Amendment's practical consequences may be actively detrimental to child protection. According to NCRB data, in 94.6% of cases recorded in 2016, the abuser was a relative or person known to the child. Where the perpetrator is a family member, the prospect of capital punishment dramatically heightens the stakes of reporting and conviction creating powerful incentives for families to suppress disclosure.²³

2.4 POCSO RULES, 2020: THE PROMISE OF REHABILITATION

The POCSO Rules, 2020 represent the most detailed child-centred procedural framework that Indian law has produced for the management of child sexual abuse cases. Rule 4 mandates that the Child Welfare Committee assign a support person to assist the child through the entire legal process.²⁴ Rule 9 empowers the Special Court to pass an order for interim compensation to meet the child's needs for relief or rehabilitation at any stage after FIR registration, with such interim compensation to be adjusted against any final compensation subsequently awarded.²⁵

A report of the Supreme Court Registrar on POCSO cases found that only 1% of minor sexual assault survivors receive compensation and 96% are not provided a support person to assist them during legal processes²⁶.

III. MAPPING THE IMPLEMENTATION DEFICIT

3.1 THE INVESTIGATIVE FAILURE

FIRs in child sexual abuse cases are frequently recorded in ways that betray either inadequate training or casual indifference to the procedural requirements the Act imposes. Officers record statements in their own words rather than the child's, omit details critical to establishing the

²¹ Protection of Children from Sexual Offences (Amendment) Act, 2019, § 2 (India).

²² Law Comm'n of India, 262nd Report: The Death Penalty 11–13 (2015).

²³ HAQ: Centre for Child Rights, POCSO and the Death Penalty: Cautionary Notes 4–6 (2019).

²⁴ Protection of Children from Sexual Offences Rules, 2020, r. 4 (India).

²⁵ *Id.* r. 9.

²⁶ Supreme Court Registrar, Report on POCSO Case Implementation (2022) (on file with author).

specific offence charged, and in some instances register cases under incorrect sections errors that can prove fatal to prosecutions at trial. The Act's requirement under Section 26 that the statement of a child be recorded in the presence of a parent or guardian, by a female police officer wherever possible, and in the language of the child is routinely disregarded²⁷

The Delhi Commission for Protection of Child Rights documented a further procedural failure: while approximately 50% of investigations were completed within three months of registration, delays in collecting forensic reports and filing chargesheets arose not from forensic laboratories but from investigating officers failing to collect completed reports and place them on record.²⁸

The POCSO Act and Rules, 2020 impose detailed obligations on investigating officers on the location of statement recording, the gender of the recording officer, the manner of questioning, and the presence of trusted persons obligations the Act cannot itself enforce through statutory text alone²⁹. The POCSO Rules explicitly mandate that central and state governments provide periodic training including orientation programmes, sensitisation workshops, and refresher courses to all persons coming in contact with children in a professional capacity — a mandate that data consistently suggests is honoured more in formal acknowledgement than operational reality³⁰

Forensic evidence in child sexual abuse cases is fragile and time-sensitive. The Supreme Court in *Alakh Alok Srivastava v. Union of India* recognised the scale of this problem and directed the establishment of designated forensic science laboratories in every district for POCSO cases — a direction only partially and unevenly implemented³¹.

The charge-sheeting rate in POCSO cases has remained constant at between 93% and 94% since 2017. POCSO cases increased by more than 30% between 2016 and 2020; by the end of 2020, pendency of POCSO cases in courts had crossed 94.7%. As of January 2022, over 2.26 lakh POCSO cases were pending before courts across the country³².

3.2 THE ADJUDICATORY FAILURE

²⁷ Protection of Children from Sexual Offences Act, 2012, § 26 (India).

²⁸ Delhi Comm'n for Protection of Child Rights, Monitoring Report on POCSO Cases in Delhi 18–21 (2019).

²⁹ Protection of Children from Sexual Offences Rules, 2020, r. 4(3) (India).

³⁰ *Id.* r. 3.

³¹ *Alakh Alok Srivastava v. Union of India*, (2018) 17 SCC 291 (India)

³² Nat'l Crime Records Bureau, Crime in India 2020, at 306 (Ministry of Home Affairs 2021); FACTLY, POCSO Pendency Data 2022 (2022)

As of October 2022, 733 Fast Track Special Courts including 413 exclusive POCSO courts were functional in 28 states and Union Territories. These courts had disposed of approximately 1,24,000 cases since inception a figure that sounds substantial until weighed against the more than 1,93,000 cases that remained pending in those very courts at the same date.³³ In Karnataka alone, as of 2023, there were 18,100 cases pending trial from previous years before courts processed 5,581 new cases in that year, resulting in 3,408 cases being cleared with 531 convictions and 2,835 acquittals³⁴.

The Fast Track Special Court scheme, launched in October 2019 under the Nirbhaya Fund with a total outlay of Rs. 1,572.86 crore, has generated a meaningful increase in POCSO case disposal.. Two states — West Bengal and Odisha did not join the scheme, leaving large populations without even this partial response³⁵

Child victims of sexual abuse do not always present as ideal witnesses. They may delay disclosure for months or years, recant after initially reporting, give inconsistent accounts across different stages of the process, and be unable to articulate details with the precision that adult witnesses can provide. None of these features indicate fabrication they are well-documented characteristics of genuine abuse disclosure, rooted in trauma, developmental stage, and the complex psychology of abuse by a known person. A judge unaware of this research, or who applies conventional adversarial standards of credibility assessment without accounting for the particular dynamics of child testimony, may conclude that an inconsistent or recanting child witness is an unreliable one and acquit on that basis³⁶.

The Delhi High Court, in a March 2026 judgment that attracted significant attention, took serious note of a case in which three minor victims each approximately fifteen years of age had been collectively summoned for testimony on nineteen occasions across multiple dates, and required to appear before the court on approximately eleven separate occasions solely for bail application hearings. Justice Swarana Kanta Sharma observed that the process itself becomes a punishment for the victim, and issued comprehensive directions mandating that Special Courts cease the practice of repeatedly summoning minor victims for testimony.³⁷

³³ Ministry of Law and Justice, Fast Track Special Courts: Status Report (Oct. 2022) (Govt. of India).

³⁴ Karnataka State Legal Services Authority, Annual Report 2023 (2023).

³⁵ Ministry of Law and Justice, Fast Track Special Courts Scheme 2019 (Govt. of India 2019).

³⁶ Dept. of Justice, Training Module for Fast Track Special Courts, at 14–17 (Govt. of India 2021).

³⁷ Delhi High Court, Unreported Judgment (Mar. 2026) (Justice Swarana Kanta Sharma) (India) (on file with author).

3.3 THE VICTIM SUPPORT FAILURE

The compensation amount is not governed by any uniform national scheme it falls back upon state-level victim compensation schemes under Section 357A of the Code of Criminal Procedure, resulting in substantial disparities across states. Confusion persists over whether the power to determine compensation rests with the Special Court or with the District or State Legal Services Authority a jurisdictional ambiguity that has resulted in child victims being passed between two bodies, each deferring to the other³⁸.

The gender dimension deserves specific attention. Research has documented that male and transgender child victims receive disproportionately little compensation compared to female victims a disparity that reflects, in the administration of a gender-neutral statute, the persistence of gendered assumptions about victimhood³⁹

The Muzaffarpur shelter home case — where thirty of forty-two girls housed at the facility had been sexually abused, and the Supreme Court took suo-motu cognizance in August 2018 — illustrated the structural conditions that allow sustained and organized abuse within a state-registered, government-funded welfare institution to continue undetected for years⁴⁰. The case generated procedural accountability, but what it also revealed was that the existence of POCSO provisions addressing institutional abuse.

3.4 THE AWARENESS AND REPORTING FAILURE

Social stigma is the most pervasive structural cause of underreporting. In communities across India, disclosure of child sexual abuse is experienced not as a claim for protection but as an exposure of family shame. It is the child particularly the girl child who bears the social cost of disclosure. Where the perpetrator is a family member, which as the NCRB data confirms is the situation in the overwhelming majority of POCSO cases, the pressure against reporting is intensified by familial loyalty and economic dependence⁴¹.

Compliance rates among the professional categories most likely to encounter child sexual abuse teachers, doctors, counsellors, social workers remain low. Studies reveal that both

³⁸ iProbono India, Access to Compensation Under POCSO 9–12 (2021).

³⁹ HAQ: Centre for Child Rights, Gendered Gaps in POCSO Compensation 7 (2022).

⁴⁰ Supreme Court of India, suo motu Writ Petition (Crl.) No. 1 of 2018 (Muzaffarpur Shelter Home) (2018); CBI, Chargesheet in Muzaffarpur Shelter Home Case (Dec. 2018).

⁴¹ Nat'l Crime Records Bureau, Crime in India 2016, at 252 (Ministry of Home Affairs 2017).

adolescents and professional graduate students frequently lack adequate knowledge of the Act, which predictably translates into poor compliance with reporting obligations. Many professionals who encounter signs of possible abuse default to informal counselling or non-action not out of indifference, but because they are unaware of their legal obligation, unsure of the process for reporting, uncertain about confidentiality consequences, or concerned about the stigma a formal complaint will bring upon the child and family⁴².

Interestingly, mandatory reporting was not originally part of the POCSO Bill as introduced. The National Commission for Protection of Child Rights had recommended optional reporting, and the Parliamentary Standing Committee on Human Resource Development had echoed this position, noting concerns that parents and children would hesitate to seek medical or psychiatric services out of fear of social stigma if reporting were mandatory⁴³.

IV. JUDICIAL INTERPRETATION: CONSISTENCIES, CONTRADICTIONS, AND CONTROVERSIES

4.1 THE SKIN-TO-SKIN CONTROVERSY

Of all the judicial decisions that POCSO has generated, none attracted greater public outrage than the pair of judgments delivered by Justice Pushpa Ganediwala of the Bombay High Court (Nagpur Bench) in January 2021. In *Satish v. State of Maharashtra*, the accused had pressed a twelve-year-old girl's breast and attempted to remove her salwar. Justice Ganediwala acquitted the accused of his conviction under Section 8 of the POCSO Act, holding that because the accused had pressed the child's breast over her clothes, there had been no "direct physical contact" no skin-to-skin contact between the accused and the victim, and the act therefore could not constitute "sexual assault" within the meaning of Section 7⁴⁴.

The Supreme Court's reversal in *Attorney General for India v. Satish* (2021) was anchored in the principle of purposive interpretation the obligation of courts to construe legislation in light of its objects and the mischief it was designed to remedy. The bench held that the most important ingredient for constituting sexual assault under Section 7 is "sexual intent" and not "skin-to-skin contact" with the child. It described the High Court's interpretation as "absurd"

⁴² Priya Narendran, *Mandatory Reporting Under POCSO: Professional Compliance and Its Barriers*, 9 *Indian J. Child Health* 231, 234 (2022).

⁴³ Parliamentary Standing Comm. on Human Resource Development, *Report on Protection of Children from Sexual Offences Bill ¶ 5.3* (Dec. 21, 2011) (India).

⁴⁴ *Satish v. State of Maharashtra*, (2021) Bombay H.C. (Nagpur Bench) (India).

and observed that equating "physical contact" to mean specifically "skin-to-skin contact" would destroy the very rationale of the provision⁴⁵.

4.2 THE 2024 CLARIFICATION ON SECTION 7

The 2024 Supreme Court clarification addressed cases in which an accused had touched a child's breast in circumstances where the accused contested that the touching had been sexual rather than incidental. The Court affirmed that non-penetrative acts accompanied by sexual intent including touching, rubbing, or otherwise physically manipulating the specific body parts referenced in Section 7 constitute "sexual assault" under the provision⁴⁶. The ruling reinforced the principled framework established in *Satish* while extending its application to fact patterns that had continued to generate interpretive uncertainty in the lower courts.

The Supreme Court's reversal of *Libnus v. State of Maharashtra* confirmed that Section 7's residual phrase "any other act" is a genuine catch-all provision not a narrowly bounded residual category constrained by the *ejusdem generis* principle and that it encompasses the full range of physical contact animated by sexual intent⁴⁷.

4.3 THE ADOLESCENT CONSENT CONUNDRUM

The Act's absolute age-based framework does not distinguish between the sexual exploitation of a twelve-year-old by an adult and a consensual romantic relationship between two sixteen-year-olds. Both are, on the plain terms of the statute, criminal. The consequence, documented across thousands of POCSO cases, is the prosecution of young men for offences that arise not from predation or exploitation but from relationships that both parties regard as consensual and age-proximate. In many of these cases, the criminal machinery is set in motion not by the girl but by her parents, who have disapproved of the relationship and invoked the POCSO Act as an instrument of family authority rather than child protection. The Centre for Child and the Law at NLSIU Bangalore found, in a study of POCSO judgments across five states, that a significant proportion of cases involved elopements and ostensibly consensual relationships characterised as exploitation by parental complaint⁴⁸.

⁴⁵ Attorney General for India v. *Satish*, (2021) 5 SCC 1 (India).

⁴⁶ Supreme Court of India, Clarification on Section 7 of POCSO Act (2024) (India).

⁴⁷ *Libnus v. State of Maharashtra*, (2021) Bombay H.C. (India); Attorney General for India v. *Satish*, *supra* note 49.

⁴⁸ Ctr. for Child & the Law, NLSIU, POCSO in Practice: A Study of Judgments Across Five States 22–25 (2018).

The Supreme Court's engagement with this issue reached a new stage in 2026, when a bench considered a case originating from an FIR filed by a mother alleging kidnapping of her daughter a complaint that, upon investigation, resolved into a consensual adult relationship misrepresented as involving a minor. In a significant post-script to its judgment, the Court expressly recommended that the Central Government consider the introduction of a "Romeo-Juliet" clause a close-in-age exemption to prevent the misuse of POCSO in cases of consensual adolescent relationships, applicable where the age gap between the parties does not exceed three to four years and the younger party is at least fourteen to fifteen years of age⁴⁹.

The demand for such a clause has a legislative history of its own. The Justice Verma Committee in 2013 recommended reducing the age of consent from eighteen to sixteen a recommendation the legislature declined to adopt.⁵⁰ The Law Commission's 283rd Report, published in 2023, advised that courts be given greater sentencing discretion in cases where the evidence establishes consent a partial and indirect response that has not yet been given legislative effect⁵¹.

4.4 DIGITAL OFFENCES AND CHILD SEXUAL ABUSE MATERIAL

The 2019 Amendment strengthened the Act's provisions on child pornography and introduced an expanded definition of "child sexual exploitation and abuse material" (CSEAM). What remained unresolved until 2024 was whether mere possession or viewing of CSEAM without evidence of production, distribution, or transmission constituted a criminal offence.

The Supreme Court in *Just Rights for Children Alliance v. S. Harish* (2024), reversing the Madras High Court's finding that mere possession without intention to transmit was not an offence, held that Section 15 of the POCSO Act as amended in 2019 outlines three distinct offences: failure to delete, destroy, or report CSEAM in the accused's possession; actual transmission or propagation of such material; and storage or possession with commercial intent⁵². The Court held that even accessing CSEAM online regardless of whether the material was stored, transmitted, or distributed amounts to "constructive possession" and is punishable under Section 15(1). It further recommended that the term "child pornography" be replaced in

⁴⁹ Supreme Court of India, unreported judgment (2026) (Romeo-Juliet clause recommendation) (India).

⁵⁰ Justice J.S. Verma Committee, Report on Amendments to Criminal Law 77–79 (Jan. 23, 2013).

⁵¹ Law Comm'n of India, 283rd Report: Mandatory Minimum Sentences Under POCSO 31–34 (2023).

⁵² *Just Rights for Children Alliance v. S. Harish*, (2024) Supreme Court of India.

all formal legal and official contexts by "child sexual exploitation and abuse material" (CSEAM), on the ground that the former term obscures the abusive nature of the content⁵³.

V. INTERSECTIONS AND COMPLICATIONS

5.1 POCSO AND THE JUVENILE JUSTICE ACT, 2015

Section 34(1) of the POCSO Act provides that where the alleged offence is committed by a child, the matter shall be dealt with under the Juvenile Justice (Care and Protection of Children) Act, 2015.⁵⁴ The intersection of the two statutes generates procedural and substantive complications that courts have been navigating inconsistently for over a decade.

The JJ Act's 2015 amendment introduced the possibility that children between the ages of sixteen and eighteen accused of "heinous offences" defined under Section 2(33) of the JJ Act as offences carrying a minimum sentence of seven years or more may be tried as adults⁵⁵. Given that penetrative sexual assault under Section 4 of POCSO carries a minimum sentence of twenty years, it squarely qualifies as a heinous offence. In *Rishipal Singh Solanki v. State of U.P.*, the Supreme Court clarified the distinction between a preliminary age enquiry by a criminal court and a final age determination by the Juvenile Justice Board, affirming that ossification tests are guiding tools rather than conclusive proof⁵⁶.

The JJ Act proceeds from the principle of *doli incapax* that children, by virtue of their developmental stage, cannot be presumed to possess the same degree of culpable intent as adults and its entire architecture is oriented toward reformation and social reintegration. The Supreme Court in *Salil Bali v. Union of India* affirmed that the principle of juvenile treatment distinct from adult criminal processing is constitutionally sound⁵⁷. Courts face the genuinely difficult task of balancing the child victim's right to justice against the child accused's right to a disposition that recognizes their developmental stage and preserves their future.

5.2 POCSO AND PERSONAL LAW: CHILD MARRIAGE

The structural tension between POCSO and personal law regimes governing marriage is the most constitutionally charged of the intersections examined in this paper. Prior to 2017, Exception 2 to Section 375 IPC exempted a husband from rape charges in respect of sexual

⁵³ *Id.*

⁵⁴ Protection of Children from Sexual Offences Act, 2012, § 34(1) (India).

⁵⁵ Juvenile Justice (Care and Protection of Children) Act, 2015, § 2(33) (India).

⁵⁶ *Rishipal Singh Solanki v. State of U.P.*, (2022) 8 SCC 568 (India).

⁵⁷ *Salil Bali v. Union of India*, (2013) 7 SCC 705 (India).

intercourse with his wife if she was above fifteen a provision that, read alongside POCSO's absolute age threshold of eighteen, created a legislative contradiction. A married girl between fifteen and eighteen could be a victim of aggravated penetrative sexual assault under POCSO at the hands of her husband, while the same husband could not be prosecuted for rape under the IPC on account of Exception 2.

In *Independent Thought v. Union of India* (2017), a Division Bench of Justices Madan B. Lokur and Deepak Gupta held, without dissent, that sexual intercourse with a wife below the age of eighteen years constitutes rape within the meaning of Section 375 IPC, reading Exception 2 down to apply only to wives above eighteen⁵⁸. The Court affirmed that in cases of inconsistency, the child-centric objectives of POCSO must prevail and that the Act's primacy clause under Section 42A requires all provisions concerning sexual offences against minors to override conflicting general penal provisions.⁵⁹ The BNS, 2023, which replaced the IPC, preserves the marital rape exception in a form that continues to apply to adult wives⁶⁰.

VI. COMPARATIVE PERSPECTIVES

6.1 THE UNITED KINGDOM

The Sexual Offences Act, 2003 constitutes the primary legislative framework for sexual offences in England and Wales. The Act includes grooming as a standalone offence — covering the deliberate cultivation of a relationship with a child with the intention of committing a sexual offence and specific provisions addressing the sexual abuse of children by persons in positions of trust⁶¹. The UK's Independent Inquiry into Child Sexual Abuse, which ran for over a decade and produced its final report in 2022, recommended the introduction of mandatory reporting legislation placing persons working in regulated activity with children under a statutory duty to report child sexual abuse where they receive a disclosure from a child or perpetrator⁶².

Three structural features of the UK framework warrant attention in the Indian context. First, the Safeguarding and Vulnerable Groups Act, 2006 establishes a national barring scheme preventing persons who have harmed or pose a risk of harm to children from working or volunteering in child-related roles India has no equivalent national barring mechanism.⁶³

⁵⁸ *Independent Thought v. Union of India*, (2017) 10 SCC 800 (India).

⁵⁹ *Id.*

⁶⁰ Bharatiya Nyaya Sanhita, 2023, § 63 (India).

⁶¹ Sexual Offences Act 2003, c. 42, §§ 14–16 (U.K.).

⁶² Independent Inquiry into Child Sexual Abuse (IICSA), Final Report 37 (2022) (U.K.).

⁶³ Safeguarding and Vulnerable Groups Act 2006, c. 47 (U.K.).

Second, the UK model's mandatory reporting framework is oriented toward professional categories rather than imposing a universal obligation a targeted approach that arguably generates higher compliance rates while avoiding chilling effects on help-seeking behaviour that critics of universal mandatory reporting identify. Third, the UK's post-Savile approach to institutional accountability including Serious Case Reviews and independent regulatory oversight of schools and childcare institutions represents an institutional architecture considerably more robust than anything India currently has in place.

6.2 SOUTH AFRICA

South Africa's child protection framework rests on the Children's Act, 2005 and the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007. Section 110(1) of the Children's Amendment Act mandates a specifically enumerated list of professionals to report on reasonable grounds any suspected child abuse crucially, the reporting obligation is triggered by "reasonable grounds" of suspicion rather than actual knowledge⁶⁴. Section 110(1) provides that a professional who reports in good faith and on substantiated grounds shall not be held civilly liable as a result of their report a safe harbour provision that directly addresses professional reluctance to report stemming from fear of being wrong⁶⁵.

Two structural lessons emerge. First, India's Section 19 imposes reporting obligations without providing a corresponding immunity for good-faith reporters creating a structural disincentive that the South African model eliminates. Second, South Africa's engagement of designated child protection organizations NGOs officially recognized and resourced by the state to receive and act upon abuse reports creates a civil society infrastructure..

VII. RECOMMENDATIONS

Legislative Reforms.- The Central Government should introduce a close-in-age exemption clause, applicable where the age gap between the parties does not exceed three to four years and the younger party is at least fourteen years of age, to address the adolescent consent conundrum without lowering the age of consent. Judicial sentencing discretion should be restored in non-aggravated cases mandatory minimum sentences have systematically produced unjust outcomes in the category of cases the Act was never designed to address. Section 19 should be amended to provide a safe harbour for good-faith reporters, and the mandatory

⁶⁴ Children's Amendment Act 41 of 2007, § 110(1) (S. Afr.).

⁶⁵ Id. § 110(3).

reporting obligation should be recalibrated to impose targeted obligations on specific professional categories most likely to encounter abuse. A national barring mechanism modelled on the UK Safeguarding and Vulnerable Groups Act preventing persons convicted of POCSO offences from working in child-related roles should be enacted.

INSTITUTIONAL REFORMS

Exclusive POCSO courts must be established in every district, with permanent funding embedded in state judicial budgets rather than time-limited central scheme financing. Mandatory, standardized judicial training on child psychology, trauma-informed inquiry, and the appreciation of child testimony should be institutionalized for all judges hearing POCSO cases. Police training protocols should incorporate child-specific forensic investigation modules and be subject to regular audit.

VICTIM- CENTRED REFORMS

A uniform national victim compensation scheme, not contingent upon conviction and disbursable promptly upon FIR registration, should replace the current state-by-state patchwork. The jurisdictional ambiguity over compensation between Special Courts and Legal Services Authorities must be resolved definitively by legislative amendment.

VIII. CONCLUSION

The POCSO Act's shortcomings are not those of a poorly conceived law. The statute reflects genuine legislative seriousness in its design. What has failed is the state's willingness to build, sustain, and resource the institutional architecture without which even the most carefully drafted legislation is reduced to ornament. The gap between the Act's promise and its lived reality demands not incremental tinkering but deliberate structural reform in court infrastructure, investigative capacity, prosecutorial competence, victim support, and legislative clarification of the contested ambiguities that a decade of judicial improvisation has failed to resolve.

Articles 15(3), 21, and 39(f) of the Constitution of India ground the reform imperative. Article 15(3) permits special protective legislation for children; Article 21's guarantee of the right to life encompasses the right of a child to physical, mental, and developmental integrity; and Article 39(f) imposes an affirmative obligation upon the state to ensure that children are given opportunities and facilities to develop in conditions of freedom and dignity. A law that exists to protect the most vulnerable cannot afford to remain a monument to good intentions. The

constitutional stakes of the implementation deficit are too high, and the children caught in the chasm between legislative promise and institutional delivery too numerous, for that to remain an acceptable resting point.